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BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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MAILING ONLINE SERVICE

Docket No. MC98-1

**PITNEY BOWES RESPONSE TO THE MOTION
OF THE UNITED STATES POSTAL SERVICE FOR EXPEDITION,
AND FOR WAIVER OF CERTAIN PROVISIONS OF RULE 161 AND
CERTAIN PROVISIONS OF RULE 64(h)**

Pitney Bowes Inc. ("Pitney Bowes") submits this response to the Motion of the United States Postal Service for Expedition, and For Waiver of Certain Provisions of Rule 161 and Certain Provisions of 64(h) ("Postal Service Motion").

Pitney Bowes does not oppose the Postal Service request for waiver of portions of Rules 54 and 64, on the understanding that the case will nonetheless proceed without bar to appropriate examination of issues that may be implicated by the rules waived. That is, though the Postal Service will not be obliged to present otherwise required information at the onset of this proceeding, parties should not be precluded from discovering such information as the case moves forward.

Presiding Officer's Ruling MC98-1/2 deals with the requested waiver of Rule 161 by proposing to bifurcate the docket, and to deal with the market test and experimental phases of the case in sequence. For the reasons set forth below, we support this approach which, we believe, properly balances the Postal Service's desire for expedition with dictates of procedural fairness.

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Postal Service undertakings authorized by the market test rules have a narrow purpose. They are designed " . . . for obtaining information that could shed light on the prospects of potential service innovations through limited testing in the marketplace." Notice of Proposed Rulemaking, 60 Fed. Reg. 54981 (October 27, 1995). There may be situations in which, as the Postal Service urges, market tests can appropriately serve as precursors to experimental rather than permanent rates.

However, market testing is legitimate only if it serves the core purpose of providing the Commission with information that will be helpful to it in evaluating the propriety of proposed rates, whether they are "permanent" or experimental. The "test" advocated by the Postal Service here will not serve that purpose and, therefore, should not be permitted unless the Postal Service alters its test proposal to conform with the requirements of Rules 161 and 164 and the spirit of Rule 165.^{1/}

As we understand the Postal Service request, it asks that the market test begin in October of this year, reducing the period for adjudicating the request for the test to approximately 45 days, roughly half of the 90-day interval established by Rule 164.^{2/} The actual effects of all of the Postal Service's requests for

^{1/} While Mr. Garvey's testimony concerning data collection during the market test period may literally comply with the requirements of Rule 165, the data collected in the course of a market test should have some role in the adjudication of rates proposed following the test period.

^{2/} In the course of adopting the market test rule, the Commission noted that "the 60-day schedule dictated by the Postal Service's rules may be insufficient to provide interested parties an adequate opportunity to exercise their due process rights under 3624." Notice of Proposed Rulemaking, 60 Fed. Reg. at 54982. This Footnote continued on next page

waiver and expedition are more dramatic still. They would effectively put in place the experimental rates on only approximately 45 days notice. Although the market test is limited in geographic scope, in duration (approximately 3 months)^{3/} and at least tacitly limited in "the number of customers who will participate" (several thousand), the Postal Service then asks that all limitations on scope and scale be eliminated for an experiment that could last up to two years. Under the Postal Service's waiver request, the time for adjudicating the market test runs simultaneously with that for adjudicating the experimental proposal. This is not the way that the Commission's rules were intended to work. Rather, the rules contemplate that the time for consideration of the experiment is to begin only after an adjudication of the market test proposal. Thus, unless the proceeding is bifurcated, the effect of the Postal Service's procedural proposal will be to very substantially considerably shorten the time for examination and consideration of the experiment.

Pitney Bowes proposes that the request for a three-month market test be evaluated by interested parties for as much of the 90-day period provided by rule for such proceedings as the Commission determines appropriate. The proposal

Footnote continued from previous page

led to the Commission's recommendation and subsequent adoption of a 90-day period for consideration of market test proposals. Rules of Practice § 164.

^{3/} The rules limit market tests to one year in length except in "extraordinary circumstances". Rules of Practice § 161.

for experimental rates should be suspended^{4/} during the period that the market test request is being adjudicated. Following the entry of an order concerning the market test proposal, proceedings on the experimental proposal should move forward. After the expiration of as much of the 150-day period as the Commission finds to be appropriate for discovery and any necessary hearings, implementation of the experiment (if recommended by the PRC and approved by the Governors) could follow. Pitney Bowes has no objection to the continuation of the market test (for a period not to exceed one year) after its three-month initial period, during the pendency of adjudication of the experimental rates proposed. However, the test limitations on geographic scope and scale (in terms of numbers of customers served) should be maintained during any such continuation.

This proposal accommodates the Postal Service's desire to conjoin a market test with experimental rates and balances the Postal Service's wish for extreme expedition with the needs of interested parties and the Commission to engage in meaningful analysis of the proposals.

There are two very obvious ways in which deliberations will be aided by this approach. First, the parties and the Commission will be able to evaluate the market test price points with knowledge of the actual contract prices of the printer

^{4/} Section 166 of the rules of practice provides for such suspension at the request of the Postal Service. The Commission plainly has the power to impose a suspension as a condition of the rule waivers requested by the Postal Service.

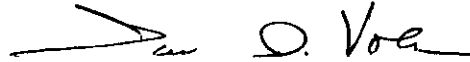
that will be involved in the test. The Postal Service has indicated that it expects to come to contract in "early August". USPS-T-1, 6 (Witness Garvey). Trying to reach a recommended decision on the market test rates -- a decision that will be driven in large measure by these contract prices -- before the end of September *unnecessarily impedes the deliberative process. More time than this is required* and the procedures advocated here will provide it.

At the next stage of proceeding, examination of the proposed experimental rates, it is imperative that whatever can be learned from the market test be applied. As we noted at the outset, this is the purpose of market testing. *If the market test does not begin until early October, it will be impossible to* assemble meaningful data from that test, evaluate that data and incorporate the data into analysis and findings before the end of November. Again, more time than this is required and Pitney Bowes' proposal provides it.

Contrarily, no plausible reason has been advanced by the Postal Service *for the greatly truncated schedule proposed here.* The Postal Service invokes the "possibility that major software developers could integrate Mailing Online into [unspecified] impending updates of software . . ." (Postal Service Motion, 1 (emphasis supplied)). This is far too imprecise and much too speculative. It is also inconsistent with the fact that the Postal Service has actually been engaged in a market test since March of this year and there has been no disclosure of whether the Mailing Online works satisfactorily with existing software packages. That is not, of course, to say that software improvements to advance service efficiency might not be forthcoming, but it seems extraordinarily unlikely that

knowing of the fate of the experiment by the end of November is critical to such future developments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ian D. Volner". The signature is stylized with a long horizontal stroke at the beginning and a cursive "Volner" following.

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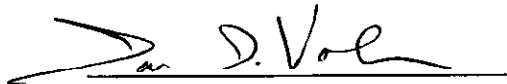
Counsel to Pitney Bowes Inc.

August 12, 1998

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CERTIFICATION

I hereby certify that I have this day served the foregoing document upon the United States Postal Service and the Office of the Consumer Advocate in this proceeding in accordance with section 12 of the rules of practice and the Commission's Order No. 1216.



Ian D. Volner